IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Commercial Taxes Officer, Sirohi	vs.	M/s Shri Nath Cement Industries Pvt. Ltd., Bharja, Abu Road.

S.B. Sales Tax Revision Petition No.1388/99 against the Order dated 25.2.1992 passed by the Rajasthan Sales Tax Tribunal,Ajmer in Sales Tax Appeal No.1/90/ST/SIROHI.

Date of Judgment: July 05 , 2006.

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

Mr. Sangeet Lodha for the petitioner.
Mr. N.S. Acharya for the respondent.

REPORTABLE

BY THE COURT:

Heard learned counsel for the parties.

Brief facts of the case are that the Collector, Central Excise and Custom, Jaipur issued show cause notice to the assessee on 21.6.1988 alleging therein contravention of the provisions of Rules 9(i), 52A, 53, 173G and 226 of the Central Excise Rules, 1944 and evasion of central excise duty to the tune of Rs.7,21,726.92. After considering the explanation submitted by the assessee, an enquiry was ordered and some witnesses were examined. The assessing authority was of view that the assessee is prima facie guilty of tax evasion along with evasion of excise and custody duty. Therefore, the matter was entrusted to the

Assistant Commercial Tax Office (for short 'the ACTO"), Anti-Evasion, Jodhpur. The ACTO obtained copies of certain documents from the Excise Department and submitted report No.82 dated 10.2.1989. The concerned ACTO found tax evasion and assessed the sale of Rs.8,13,000/-. The assessing authority thereafter issued show cause notice to the assessee as to why the above sale be not taxed and penalty be not imposed against the assessee.

The assessee when served with the notice, he objected to the proceedings on the ground that the enquiry report was based on the documents of the excise and custom department and that evidence cannot be looked into. The assessing authority was of the view that the assessee was given full opportunity to present his case and he was granted opportunity to produce his documents also but he did not produce those documents and, therefore, the assessing authority passed the assessment order levying the tax amounting to Rs.1,02,000/- and surcharge Rs.10,200/- and imposed penalty under Section 16(1)(a) of the Rajasthan Sales Tax Act, 1954 and for imposing the said penalty, a show cause notice was also issued. The explanation submitted by the assessee against the imposition of the penalty was found unsatisfactory and penalty of Rs.2,00,000/- was imposed under Section 16(1)(a) of the Act.

The assessee preferred appeal before the appellate authority, which was dismissed by the appellate authority vide order dated

23.12.1989.

Being aggrieved against the two assessment orders, the assessee preferred appeal before the Tax Board, which was allowed by the Tax Board on the ground that the documents which were obtained from the Excise Department have been used against the assessee without affording opportunity to the assessee to rebut the documents. The Tax Board was of the view that the evidence collected in the back of the assessee could not have been used against the assessee. It is also observed that the evidence obtained in one case should not have been used in another case by the department. After holding so, the Tax Board itself was of the view that the assessing authority shall be free to proceed against the assessee according to law in respect of the above matter. Despite holding that the assessing authority shall be free to proceed against the assessee according to law in respect of the above matter, still the Tax Board did not pass specific order of remand, sending the matter back to the assessing authority.

The learned counsel for the petitioner submitted that since there were material available before the taxing authority, therefore, the proceeding were initiated. Show cause notice was issued to the assessee as required under law and thereafter, on the basis of the material available on record, the assessment order was passed. It is submitted that without admitting for the sake of argument, all the material which

were before the department, should have been brought to the notice of the assessee (if not brought to notice of assessee) by the department before using those material against the assessee even then it was not a case of no evidence at all. It is also submitted that the objection could have been taken by the assessee before the assessing authority and the assessee could have demanded opportunity to rebut the said evidence which were part of the record of assessing authority and thus was in knowledge of the assessee. In any case, the tax liability cannot be avoided on the ground of not "fair trial" against the assessee, particularly in view of the fact that even before imposition of the penalty, show cause notice was given to the assessee.

The learned counsel appearing for the assessee vehemently submitted that the Tax Board categorically held that the evidence which has already been collected by the department, cannot be used against the assessee because of the reason that that evidence was collected in another case and it is settled law that the evidence collected in one case cannot be used in another case. It is also submitted that the Tax Board held that the evidence obtained in the back of the assessee has been used and, therefore, when the proceedings have been concluded by the order of the Tax Board and the order of assessment has been set aside, there is no question of remanding the matter back to the assessing authority. It is also submitted that the Tax Board was

conscious and, therefore, in ultimate para observed that the assessing authority shall be free to proceed against the assessee according to law in respect of the above matter. Therefore, the department should not have preferred appeal when they got opportunity to take legal action in accordance with law even in pursuance of the order passed by the Tax Board.

I considered the submissions of the learned counsel for the parties and perused the facts of the case and the reasons given by the Tax Board.

It is apparent from the order of the Tax Board itself that during investigation in excise evasion matter, prima facie case of tax evasion under the Sales Tax Act of the State came to the notice of the concerned ACTO, upon which the proceedings were initiated and the notices were given to the assessee. The only objection which prevailed before the Tax Board was that the evidence was collected in another case and has been used in present case and further that evidence collected in another case has been used without corroborative evidence from the department. Since the material was before the assessing authority and if he did not follow the proper procedure for acting upon the material/evidence and fact which came to his notice, then in revenue matters, the entire proceeding cannot be quashed so as to permit the tax evasion if there is a case of tax evasion or non-payment

of tax. The assessing authority can use any material and evidence which may come to his notice or is brought to his notice for taking action under the Act. It is different thing how said material and evidence can be used by him against the assessee. If it is found that the material and evidence has not been used by the assessing authority property against the assessee then that is a procedural mistake only and the case cannot be said to be case of no evidence. Evidence for the satisfaction may come before the assessing authority from any source including from the proceedings taken in another matter and even under different Act. Requirement of principles of natural justice is that the person against whom action is proposed, he must get the notice and knowledge of the evidence and must be given opportunity to rebut the evidence. And only those evidence can be relied upon which lawfully can be evidence. One of the example where evidence is not evidence is the statement of any witness taken in the back of the party. But for that there is no bar in recording statement of said witness in the presence of the party. In the same way documents have come in knowledge or in possession of the assessing authority while dealing with any other matter about different and another assessee's dealings, he may use those documents and only requirement for acting upon these documents by the assessing authority is that he must put those material before the person against whom action is proposed. It is not the law that evidence of one case cannot be

evidence in another case. It is different thing how evidence of one case can be and which of the evidence of another case can be made lawful evidence in another. If distinction is understood, there is no difficulty in making evidence of one case the evidence of another case. Therefore, above was case of remand and mere observation of the Tax Board that the department will be free to take lawful action against the assessee was not sufficient, rather say contrary to law.

In view of the above, this revision petition deserves to be allowed and hence allowed and the order of the Tax Board so far as mere setting aside of the order of the Deputy Commissioner dated 23.12.1989 and the order of the assessing authority is upheld and the matter is remanded back to the assessing authority to decide the matter afresh after giving full opportunity to the petitioner as well as to the respondent to prove their case on the basis of the evidence which both the parties want to rely upon, uninfluenced from the order passed by the Tax Board dated 25.2.1995. It is also made clear that the respondent shall be free to look into factual as well as legal pleas including the plea on the basis of bar of limitation, which may be considered by the assessing authority in the light of the relevant provisions of law applicable in case of of remand.

Both the parties are directed to remain present before the assessing authority on 21.8.2006.

(**PRAKASH TATIA),J.**

mlt.